

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 TEGUCIGALPA 000611

SIPDIS

SENSITIVE

STATE FOR WHA/CEN, DRL/PHD, INL/C/CP, AND INL/LP  
STATE PASS AID FOR LAC/CEN

E.O. 12958: N/A

TAGS: [KJUS](#) [PHUM](#) [PGOV](#) [EAID](#) [KCRM](#) [SNAR](#) [PREL](#) [ASEC](#) [HO](#)

SUBJECT: HONDURAN CRIMINAL PROCEDURE CODE: A SUCCESSFUL  
FIRST YEAR, BUT CHALLENGES REMAIN

REF: 02 Tegucigalpa 3349 (NOTAL)

1. (U) SUMMARY: A year after the implementation of Honduras' new Criminal Procedure Code (CPC), opinions regarding its level of success are positive overall, but critics remain. Supporters cite the commencement of oral trials under the new system in 2002 as evidence of the Code's success. Critics, however, contend that the changes have not done enough to eliminate corruption in the judicial system and that the new Code is already in need of reform. The current independent Supreme Court, which represents another separate milestone in Honduran judicial reform, has strongly embraced the Code. Post is optimistic about the potential long-term benefits of the new Criminal Procedure Code. END SUMMARY.

2. (U) Until February 2002, the Honduran justice system operated under a criminal procedure code that was still based in part upon Spanish colonial law. It did not provide for oral trials; cases were resolved based on written submissions. The system was slow, subject to corruption, and not transparent. In the mid-1990's, the United States first began supporting efforts to create a new CPC. Since 1997, the U.S. has contributed approximately USD 12.5 million for judicial reform in Honduras, with a particular focus on the CPC. On December 30, 1999, due in large part to U.S. policy initiatives, the Honduran Congress approved a new Criminal Procedure Code. The new code came into full effect on February 20, 2002. It introduced wholesale change into the criminal justice system, including oral trials, an adversarial trial process, increased protections for defendants, and overall changes intended to facilitate the growth of a more transparent and effective system. The CPC also introduced a strong prosecutorial function similar to that of the United States, whereby the prosecutor has significant discretion in terms of moving a case forward.

3. (U) According to the Honduran Interinstitutional Criminal Justice Commission (CIJP), since the implementation of the new Code, there have been 3,341 preliminary hearings, 3,989 initial hearings, and 1,184 pleadings. The majority of trials have involved prosecution of crimes such as homicide, rape, drug possession, and drug trafficking. Of the limited cases processed thus far, approximately 6.6 percent have resulted in convictions and 9.4 percent have resulted in acquittals. Thirty-eight percent of cases have been resolved through plea bargaining and 45 percent were dismissed due to lack of evidence or technical reasons. In cases of drug trafficking and financial fraud, there is a much higher conviction rate (52 percent), with 28 percent of cases resulting in acquittal and just 20 percent dismissed. Resolved cases have been processed with far greater efficiency under the CPC, in contrast to the former system in which cases languished for years.

4. (U) Despite these advances, there are many challenges that the judicial system has yet to overcome. Foremost among these, according to the CIJP, is the attitude of judicial officials. While the Code calls for impartial public judgment, the often secretive attitude of the older, written system sometimes prevails. Second, effective investigation of crimes is an ongoing problem. Poor coordination with police on investigations means few cases requiring significant investigation are ever brought to court. As listed above, 45 percent of all cases since the inception of the CPC have been dismissed (not all because of poor investigations, but many have been). Most prosecutions are based on cases in which the accused is caught in the act or which are resolved within 24 hours of the crime. Lack of sufficient forensic medicine resources or lack of discretion in using those resources, including a morgue that is still housed in a tiny post-Hurricane Mitch "temporary" facility, also contribute to a continually low case closure rate. A third challenge facing the new Code lies in the opposition to some of its policies, particularly those that allow the release of suspects before trial. Advocates for the revision of the new Code, including the Minister of Public Security and other law enforcement officials, appear to be gaining momentum.

15. (U) The Supreme Court also faces challenges in the Congress and in the media. Perhaps due to its increased status and greater independence, the Supreme Court came under attack this year from the Congress. In August 2002, in an apparent attempt to undermine the power of the judiciary, the Congress approved a constitutional amendment appropriating to itself the power to interpret the Constitution. A legal challenge to this move is pending with the Supreme Court (reftel) and the amendment must still be ratified before it becomes law. As the judiciary increases in strength and independence, similar attacks from the legislative and executive powers should be expected. In another highly publicized controversy, Vilma Morales, President of the Supreme Court and a Nationalist Party nominee, has been criticized for supposedly partisan dismissal of Liberal judges.

16. (SBU) COMMENT: Post foresees many challenges ahead for the CPC. It is clear that there must be constant vigilance against corruption if the justice system is to effectively utilize the new CPC to the benefit of the population. Public confidence in the system is also vital if the CPC is to be a success. Both the controversy over the partisan dismissal of judges and legislative challenges to judicial power, combined with reports of pervasive corruption, will continue to undermine public confidence in the judicial system and, by proxy, the new Code. However, Post is pleased with the progress the courts have made in implementing the CPC thus far. The Ambassador and all elements of the mission have strong relations with the Supreme Court and other judicial system actors. USAID support for the CPC is ongoing, despite limited funds. Because Honduras is a high-crime country, Post believes that a more efficient criminal justice system that provides for fair process is critical to efforts to increase citizen security. If the CPC is successful in improving public perceptions of justice and law enforcement, the CPC may also play a role in the reduction of the high rate of extrajudicial killings in Honduras. Moreover, since the current security situation dissuades investors, a more secure environment will lower the risk to investors and may ultimately help to attract much-needed foreign capital. END COMMENT.

PALMER